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COGNIS CORPORATION			OGDEN JR, NECHOLUS	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/088,260
Filing Date: June 25, 2002
Appellant(s): WEUTHEN ET AL.

MAILED
MAR 20 2007
GROUP 1700

Daniel S. Ortiz
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 7, 2006 appealing from the Office action mailed November 8, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 11-13, 15-23, 25-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang et al (6,051,544).

Lang et al disclose a granular secondary alkane sulfonate and an additive, which can be converted into a solid extrudate for a washing bar, toilet blocks or bar soaps, to give pressed articles, e.g. tables or compacts (abstract; col. 3, lines 9-12), wherein the secondary alkane sulfonates can be used in the finished detergent and cleaning product formulations in combination with other surfactants (col. 3, lines 14-17) such as anionic surfactant and additives including fatty acid protein condensation products obtained by reaction of fatty acid chlorides with oligopeptides (col. 4, lines 6-61). The total concentration of surfactants, including the secondary alkane sulfonate are from 1 to 99% by weight; and additives such as cellulose derivatives are from 0.1 to 10% by weight based on the weight of the alkane sulfonate (col. 2, lines 45-53 and col. 3, lines 1-3). Lang et al teach that said composition optionally contain cationic surfactants, wherein this is construed as non-compulsory, and additional ingredients may be included such as zeolites in an amount from 5 to 80% by weight (col. 7, lines 40-56).

Lang et al do not specifically teach each of the claimed ingredients with sufficient specificity to anticipate the claims, however, it would have been obvious to one of ordinary skill in the art to combine the non-enzymatic protein in combination with a zeolite, disintegrating agent and surfactant to comprise a bar composition because Lang et al teach each of the components for the purpose of establishing a bar composition in

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their requisite proportions. Accordingly, absent a showing to the contrary, one of ordinary skill would have been motivated to combine the components of Lang et al for their intended purpose.

(10) Response to Argument

Appellant argues that there is no teaching of a disintegrator or suggestion to provide rapid disintegration in Lang et al.

The examiner respectfully disagrees and directs applicant's attention to column 8, line 41 and col. 2, lines 50-53, wherein Lang et al teach the use of a suspension agents and solubilizers which include ingredients such as gums, starches, carboxymethyl cellulose, polyvinyl pyrrolidone and therefore reads on appellant's specification which teaches that disintegrators include starches, natural starch derivative such as celluloses and carboxymethyl starch, and polyvinyl pyrrolidone (see page 11, lines 5-15 of applicant's specification). Therefore, in view appellants' specification, Lang et al specifically suggest many of the disintegrators of the claimed invention. Moreover, appellant has not identified, in the claims, what encompasses his disintegrating agent even though appellant's specification has provided examples of disintegrators as described above and wherein many are listed as additives in Lange et al. Accordingly, it is held that *"Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims"*. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). *The selection of a known material based on its suitability for its intended use supported a prima facie*

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obviousness determination. Sinclair & Carroll Co. v. Interchemical Corp., 325 U.S. 327, 65 USPQ 297 (1945).

Appellant argues that Lang et al utilizes carboxymethyl cellulose, methyl cellulose and hydroxyethyl cellulose as additives and that “these compositions are noted in the present application as useful disintegrator”, they are not utilized as disintegrators in Lang et al but used to provide a coating.

The examiner respectfully disagrees and contends that Lang et al do not describe the function of the additive as a coating ingredient and appellant does not provide any reference (column or line number) to said additive being used as a coating ingredient. Therefore, the function of the additive is not established and therein invalidates appellants’ arguments, which are unsupported by factual evidence. Furthermore, Lang et al do teach that said additives are mixed with the secondary alkane sulfonates (see claim 1) and that said additives are water-soluble, which by definition means that the additives would undergo change as the composition is dissolved in water and therefore reads on a disintegrator (col. 2, lines 35-44). Moreover, appellant has admitted that these additives are suggested in his specification as useful disintegrators wherein one of ordinary skill in the art would have been motivated to assume that their function would have been useful as an added disintegrating agent in the absence of a showing to the contrary.

Appellant argues that the product disclosed in Lang et al would not require a disintegrator since the secondary alkane sulfonate particles do not stick together because of the nonhydroscopic coating on the particles. In addition, the coating

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additive is not distributed throughout the particles but is present only on the surface of particles.

The examiner respectfully disagrees and contends that these arguments by appellants' representative are unsupported by factual evidence and are not referenced. Again, Lang et al does not describe that the additives as coating ingredients and to the contrary, the examples refer to the additive as mixed with the secondary alkane sulfonate (see example 1-3). Moreover, it is held that *"The arguments of counsel cannot take the place of evidence in the record"* and *"An assertion of what seems to follow from common experience is just attorney argument and not the kind of factual evidence that is required to rebut a prima facie case of obviousness."* In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965); In re Geisler, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997).

Appellant argues that incorporating a disintegrator in the Lang et al compositions, would produce articles, which would have no utility.

Again, the examiner respectfully disagrees and contends that these arguments by appellants' representative are unsupported by factual evidence.

Appellant argues that Lang et al teach protein hydrolyzates useful in the practice of the invention are nonionic surfactants and the protein hydrolyzates of the present invention are not surfactants.

The examiner respectfully disagrees and directs appellant to his specification that states, "Although protein hydrolyzates are not surfactants in the true sense insofar they lack a hydrophobic residue, they are often used for formulating surface-active

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compositions by virtue of their dispersing properties.” (column 9, line 13-15). Therefore, it is clearly established that appellant’s specification does not exclude protein hydrolyzates from being surfactants, but merely describes the function of said protein hydrolyzates.

Appellant argues that Lang et al can contain cationic surfactants, which are excluded in claims 20 and 30.

The examiner contends that Lang et al teach that said compositions “in special cases,may also contain cationic surfactants” (col. 7, lines 8-9). However, the examiner contends that the cationic surfactants of Lang et al are optional or not mandatory and none of the cationic surfactants are utilized in any preferred embodiments. Therefore, it would have been obvious to one of ordinary skill in the art to modify the prior art reference, Lange et al, to exclude cationic surfactants given they are suggested as optional ingredients that are only used in special cases.

Appellant argues that Lang et al neither teaches nor suggest, forming the tablet as claimed in claims 11 and 21.

As stated above, Lang teaches the cleaning product compositions as a whole can be converted to “other solid mixtures” (col. 3, line 8). Lang et al further states that the alkane sulfonate can be converted into solid extrudates such as soap bars, washing bars, toilet blocks and tablets (col. 3, lines 9-12). The examiner contends that this reference to washing bars, bar of soap, toilet blocks and tablets refers to the finished final product, which includes additional surfactants and ingredients.

Appellant argues that Lang et al is deficient in suggesting 0.1 to 10% of a non-enzymatic protein, a zeolite a disintegrating agent and from 1 to 50% by weight of a surfactant as disclosed in claims 12, 13, 15, 16, 17, 18, 19, 20 22, 23, 25, 2627, 28, 29 and 30.

The examiner respectfully disagrees and directs appellants attention to Lang et al which specifically discloses anionic surfactant and additives including fatty acid protein condensation products obtained by reaction of fatty acid chlorides with oligopeptides (col. 4, lines 6-61). The total concentration of surfactants, including the secondary alkane sulfonate are from **1 to 99%** by weight; and additives such as cellulose derivatives are from **0.1 to 10%** by weight based on the weight of the alkane sulfonate (col. 2, lines 45-53; col. 3, lines 1-3). Lang et al teach that said composition optionally contain cationic surfactants, which is construed as non-compulsory and further include additional ingredients that may be included such as zeolites in an amount from **5 to 80%** by weight (col. 7, lines 40-56). Accordingly, all of the limitation including proportions of the claimed invention are disclosed and suggested by Lang et al and therefore it would have been obvious to the skilled artisan to combine the components to produce the detergent tablet as claimed in view of the teachings disclosed by Lang et al and in the absence of unexpected results commensurate in scope with the claimed invention.

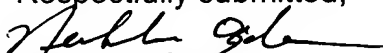
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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Necholas Ogden

NECHOLUS OGDEN
PRIMARY EXAMINER

Conferees:

Douglas McGinty 

Greg Mills 